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## Senate

### Statement of Senator Dianne Feinstein “Independent Commission on Intelligence”

Mrs. FEINSTEIN. Madam President, I thank the chairman of the Intelligence Committee for his remarks. I think he well and ably set out the structure of what we are doing.

I also thank Senator *Lott* for his remarks, particularly the remarks that said we should work together. That has been one of the problems. I want to go into that.

But before I do, I would like particularly to thank the Senator from Florida, the former chairman of the Senate Select Committee on Intelligence, for his three speeches. I had the privilege of previewing these. I think he delivered them eloquently and forcefully. I want him to know I very much appreciate his careful scholarship and his reasoned approach, which mark not only his remarks here but also his tenure as chairman of the Intelligence Committee. He has presided over what continues to be one

of the most difficult chapters in the history of our intelligence community.

Senator *Lott* has just said, with considerable spark, that we should work together. I could not agree more.

Second, the committee has been prevented from examining the use of intelligence by policymakers. This I believe is a real problem. Our own resolution sets out that we should be able to examine the use of intelligence by policymakers and administration officials. To a great extent this is the reason we are here today creating an independent commission which will have more authority than the elected officials of this Government have.

I learned this morning that the independent commission that is functioning today has access to the President's daily intelligence briefs. The Intelligence Committee of the

Senate does not have access to the President's daily intelligence briefs, nor have we had, to the best of my knowledge, through this investigation.

I was very pleased to see that over the past weekend the President has apparently reversed course, accepting the recommendations from Dr. Kay, from Members of the Senate, and from a host of experts to the effect that only a full and outside investigation will be able to be both credible and acceptable to the world at large.

I did not believe so before. I voted against the Corzine resolution when it came up before. I changed my mind because if we, the elected representatives, are not permitted to look into the use of intelligence as provided by S. Res. 400, and it has to be an outside committee that will have that right, so be it. But I find it to be really

idiosyncratic, because I believe the full power should be vested in the officials of our Government, of which the Senate plays a very major role, not necessarily always an independent committee, as it appears to be happening.

Such a commission, though, will be able to remove some of the partisanship that has infected this issue and, I hope, provide a reasoned, careful, and credible assessment. I am concerned that the President has let it be known he intends to appoint all of the members of the commission and carry this out through Executive Order. This I believe will adversely affect the commission's independence.

Let me give you an example. Many believe the handling of the National Commission on Terrorist Attacks on the United States--that is a Commission now functioning--headed by Gov. Thomas Keane and Congressman Lee Hamilton, is a case in point. There have been many reports that chronic delays in providing documents and foot dragging in arranging interviews have frustrated the efforts of this Commission to complete its work within the timeline the White House insisted upon.

The Commission is asking for an extension of time and

Senators **MCCAIN** and **LIEBERMAN** have introduced legislation to do so. I understand the President yesterday agreed to extend this timetable to July 26 of this year. I strongly believe the Commission should be given whatever time it needs to complete its examination and we, in fact, should pass the McCain-Lieberman bill.

Nevertheless, it is my hope that a commission, whether it is created by Executive order or by statute, will be able to answer four questions.

The first is: Were the prewar intelligence assessments of the dangers posed by Saddam Hussein's regime wrong? This is not as simple a question as it seems, for in the months prior to the invasion of Iraq these assessments had two separate, equally important parts. The first is whether Iraq had the capability to place the United States in such danger as to warrant the unprecedented step of a unilateral preemptive invasion of another sovereign nation. Just two days ago Secretary Powell, asked if he would have recommended an invasion knowing Iraq had no prohibited weapons, replied: "I don't know because it was the stockpile that presented the final little piece that made it more of a real and present danger and threat to the

region and to the world." He added: "The absence of a stockpile changes the political calculus; it changes the answer you get."

Second, was such a threat imminent or was it grave and growing? Critical to this debate during the Summer and Fall of 2002 was the immediacy of the threat which supported the argument that we needed to attack quickly, could not wait to bring traditional allies aboard or to try other options short of invasion.

The second question is: Whether the intelligence assessments were bad as well as wrong.

This requires a fine distinction between an intelligence assessment that is wrong, and one that is bad. Intelligence assessments are often wrong, for by their nature they are an assessment of the probability that a future event will take place. But wrong does not always mean bad. Sometimes an intelligence assessment follows the right logic and fairly assesses the amount, credibility and meaning of collected data, and still is wrong. What the independent commission needs to do is to separate these two different, but related, issues.

The third question is to determine--if the intelligence assessment was both bad and wrong--to what degree and why?

Did the intelligence community negligently depart from accepted standards of professional competence in performing its collection and analytic tasks?

Was the intelligence community subject to pressures, personal or structural, which caused it to reach a wrong result through bad analysis?

Were the ordinary internal procedures by which intelligence is subject to peer review properly carried out?

A commission must delve deeply into the mechanisms of intelligence analysis to reach these answers.

The fourth and final question is whether the intelligence assessments reached by the intelligence community, whether right or wrong, good or bad, were fairly represented to the Congress and to the American people. Did administration officials speaking in open and closed session to members of Congress accurately represent the intelligence product that they were relying upon? Were public statements,

speeches and press releases, fair and accurate? This is the cauldron boiling below the surface.

This final question is particularly grave, because it touches upon the constitutionally critical link between the executive and legislative branches. The Founders knew what they were doing when they developed a shared responsibility for war making--only Congress can declare war, with the President, as Commander in Chief, conducting it--and the need is vital for Members of Congress to have fairly presented, timely and accurate intelligence when they consider whether to invest the President with the authority as Commander in Chief to put American lives, as well as those of innocent civilians, at risk.

My vote, in particular, was based largely on intelligence, and statements about that intelligence, related to Saddam's certain possession of chemical and biological weapons and the probability or likelihood, that he had both weaponized and deployed them. Also, the fact that he had violated the U.N. missile restrictions and possessed a delivery system for a chemical or biological warhead, and could deliver that warhead 600 miles,

threatening other Middle Eastern nations or perhaps, from offshore, the United States.

There were many statements made by the administration that when combined with the intelligence created an overwhelming case, I think particularly for me and for many others. I don't think there would have been 77 votes in the Senate to authorize use of force had these statements not been made.

Let me give just five examples of such statements:

Secretary of State Powell, on September 8, 2002, said on Fox News Sunday: ``There is no doubt that he has chemical weapons stocks." He also said: ``With respect to biological weapons, we are confident that he has some stocks of those weapons, and he is probably continuing to try to develop more."

President Bush, on September 12, 2002, said in his address to the U.N. General Assembly: ``Right now, Iraq is expanding and improving facilities that were used for the production of biological weapons."

President Bush, in his October 7, 2002, address also

said: "We know that the regime has produced thousands of tons of chemical agents, including mustard gas, sarin nerve gas, and VX nerve gas."

Secretary Powell, again in his February 5, 2003, address to the U.N. Security Council, said:

Our conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent. That is enough agent to fill 16,000 battlefield rockets. Even the low end of 100 tons of agent would enable Saddam Hussein to cause mass casualties across more than 100 square miles of territory, an area nearly 5 times the size of Manhattan . . . when will we see the rest of the submerged iceberg? Saddam Hussein has chemical weapons. Saddam Hussein has used such weapons. And Saddam Hussein has no compunction about using them again, against his neighbors and against his own people.

What a strong statement--a statement that has to be backed up with almost certain facts.

President Bush said, on October 2, 2002, in Cincinnati: "Facing clear evidence of peril, we cannot

wait for the final proof, the smoking gun that may come in the form of a mushroom cloud."

I remember hearing this speech, which made a deep impression upon me.

The President of the United States said this. Members of the Intelligence Committee are looking at intelligence. When combined with the President's statements, the statements of the Secretary of State and the statements of the Vice President, how can you not believe them? That is why this committee's investigation into the use of intelligence which we have been prohibited from entering into is so important that we do. We are the official people's representatives on this Committee on Intelligence, and to cut us out from one part of an investigation that our own resolutions say we should look at, I think, is unconscionable.

When all of this is combined with the intelligence provided to Congress, the aerial photographs of what was believed to be chemical weapons plants, and the National Intelligence Estimate of October 2002, this information created an overwhelming belief that there was an imminent threat

to our Nation, and a dominant majority of the Senate of the United States voted for the resolution authorizing the use of force.

You can imagine my surprise that after more than 1,500 sites--top priority sites--have been searched and millions of dollars spent on Dr. Kay's special investigation, no weapons have been found. And Dr. Kay submits to us that he does not believe any will be found.

So the reality of what has been learned in Iraq versus the intelligence presented to us causes enormous concern.

Again, I truly believe that had it not been for the strength of the intelligence and statements made to Congress, including the Senate Select Committee on Intelligence, a vote for regime change alone, without the belief of an imminent threat, would not have had the majority it did, may well not have passed, and if it did, most likely would have passed with a bare majority.

These statements and the intelligence upon which they were based now appear to be unsupported by the available evidence, and have been contradicted by Dr. Kay's findings. A commission must

look closely at these and other similar statements.

Even as the commission moves forward, I believe Congress should undertake two related tasks. The first is to carefully review the implications of the President's so-called preemption doctrine. I have strongly criticized this policy since its inception. Although, clearly, the United States will always retain the right to defend itself in specific circumstances from a real, imminent threat, preemption as a doctrine departs from core American values. We must be strong in defense but not allow this country to become an aggressive nation of conquest.

I also believe the doctrine runs counter to 50 years of bipartisan American foreign policy, which is based on the belief that international law, multilateral agreements, and diplomacy are also effective means to promote and to protect American security.

Finally, and on a more fundamental and practical level, the doctrine requires a faith in the perfectibility of intelligence analysis that is simply not attainable. Preemption inherently requires us to be right every time on the nature and imminence of threats.

Unfortunately, as every senior intelligence official to whom I have spoken tells me, intelligence is rarely going to be that accurate, for the very reason I have mentioned earlier it is, at its heart, probability analysis.

This past weekend, Dr. Kay spoke to this issue, saying, and I quote, "if you cannot rely on good, accurate intelligence that is credible to the American people and to others abroad, you certainly can't have a policy of preemption."

The preemptive concept bets everything on one roll of the dice and we had better be right every time.

I spoke about this when the doctrine was announced and offered the hypothetical of a preemptive attack based on intelligence that was wrong, that results in destruction and death, and undermines American credibility and our position around the world. The hypothetical, so far, at least, is true in Iraq.

I hope the President and his advisers will reconsider the ill-advised adoption of preemption in light of what we have already learned from its first exercise.

The second thing the Congress should do, and do now, is begin the process of

restructuring the intelligence community and begin by taking a single, critical step: Pass legislation creating a Director of National Intelligence and change from the current situation where a single man is both head of the entire intelligence community--with its 15 departments and agencies--and the head of the Central Intelligence Agency. It is an impossible job with insufficient authority.

I have introduced legislation that would accomplish this in both the 107th and 108th Congresses. Each time I stood on this floor to urge its passage and each time I expressed my belief that the current structure could result in a colossal intelligence failure.

In June of 2002, I said: "This legislation creates the Director of National Intelligence to lead a true intelligence community and to coordinate our intelligence and anti-terrorism efforts and help assure the sort of communication problems that prevented the various elements of our intelligence community from working together effectively before September 11 never happen again." I fear it has happened again. Once more, I stand in the Senate to urge the passage of the legislation.

It has to be pointed out that our present intelligence structure for the most part is based on a post-World War II, cold-war environment. It is not suited for the new challenges of asymmetric threats and non-state entities, as well as quite possibly from states also involved in terrorism. We have a Soviet-era intelligence community in a post-Soviet world.

We need to have a Director of National Intelligence now more than ever and we should not wait any longer for the results of another commission. I remind my colleagues that creating a Director of National Intelligence was the very first recommendation of the bipartisan Joint Inquiry into the Attacks on September 11, a recommendation contained in a report signed by every member of the Intelligence Committees of the Senate and the House. Senator *Graham* spoke earlier about this provision, and I agree with his explanation of the pressing need for the change.

Such a position, if created today, would provide substantial improvement in the function and quite possibly the restructuring of the more than one dozen agencies and departments. It would give one person, appointed by the President for a 10-year term, the

statutory authority to determine strategies across the board, to set priorities, and to assign staff and dollars across departments and agencies.

It is my understanding the Senate Select Committee on Intelligence will take up this legislation in 2004, I am told, in April. It is my hope that working together we can include this legislation as part of the Intelligence Authorization Act for fiscal year 2005 and make it law this Spring.

As I have said earlier, the so-called ``bipartisan" investigation by the Senate Select Committee on Intelligence has had little effective participation by Democratic Senators, or their staffs. In fact, in many ways had the Intelligence Committee been able to carry out its responsibilities, as set for in Senate Resolution 400, much of the debate on the floor on this issue would be unnecessary. Nonetheless, I look forward to this afternoon when the report will be made available to committee members.

I deeply believe that the Senate Select Committee on Intelligence should turn its attention to its core responsibilities--conducting vigorous oversight of the intelligence community, and

carefully considering legislation to make necessary changes. To that end I urge Chairman *Roberts* to take up legislation restructuring the Intelligence Community, including, but not limited to, my bill to create a Director of National Intelligence, hold comprehensive hearings on these proposals, and report out legislation in time for inclusion in this year's Intelligence Authorization bill.

As I have said earlier, my vote in favor of the resolution to authorize the use of force in Iraq was perhaps the most difficult, and consequential, vote of my career. It was a decision based on hours of intelligence briefings from administration and intelligence officials, plus the classified and unclassified versions of the National Intelligence Estimates. My decision was in part based on my trust that this intelligence was the best our Nation's intelligence services could offer, untainted by bias, and fairly presented. It was a decision made because I was convinced that the threat from Iraq was not only grave but imminent.

Because of my vote, and the votes of the 76 other Senators who voted for the resolution, our troops are stuck in Iraq, under fire, and taking casualties. Our armed

forces are stretched thin; we have antagonized our enemies and alienated many of our closest allies.

In the post-9/11 world, a world where we confront asymmetric threats every day, intelligence plays a key role informing the policy-making process. The administration bears primary responsibility for our intelligence apparatus--ensuring that it works well, is honest, and is properly focused. The administration is also responsible for honestly and fairly presenting the results of the intelligence process to the Congress, informing, for instance our vote on the resolution to authorize force.

I now fear that the threat was not imminent, that there were other policy options, short of war, that would have effectively met the threat posed by Saddam Hussein.

And that is why a full investigation of the prewar intelligence is so critical.